

REMARKS

Reconsideration and allowance in view of the foregoing amendments and the following remarks are respectfully requested.

Upon entry of this Amendment, claims 1-6, 8-14, 16, and 17 will be pending in the present application. Claims 7 and 15 have been cancelled.

I. Second Request for Filing Receipt.

Applicant filed a Request for Correct/New Filing Receipt on June 14, 2004. As stated in that request, it appears that a Filing Receipt was never issued or received for the present application. A review of the Patent Office's private PAIR System fails to indicate that a Filing Receipt has been issued for this application. Thus, applicant again requests that a Filing Receipt be provided for this application, as required under 37 C.F.R. § 1.54(b).

II. Objection to the Claims

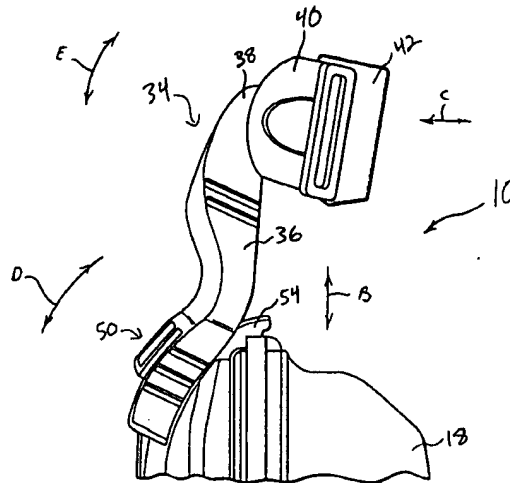
Claims 1, 3, 4, 7, 8, 11, 12, and 16 are objected to as including minor informalities. Applicant submits that the above amendments to the claims correct each of the specific deficiencies noted by the Examiner. Accordingly, applicant respectfully requests that the above rejection of claims 1, 3, 4, 7, 8, 11, 12, and 16 be withdrawn.

III. Rejection of the Claims Under 35 U.S.C. § 102/103

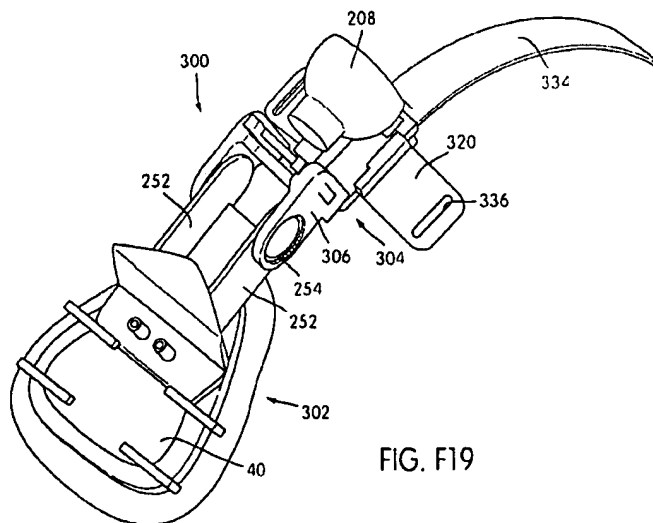
Claims 1-4, 6-12, and 14-17 stand rejected under 35 U.S.C. § 102 as being anticipated by U.S. Patent No. 6,823,869 to Raje et al. ("the '869 patent"). Applicant respectfully traverses this rejection for the reasons presented below.

Independent claim 1, as amended, recites a gas delivery mask that includes a mask shell and a forehead support. The forehead support includes a support arm (36) associated with the mask shell, a forehead support bracket (40), and a connecting assembly coupling the forehead support bracket to the support arm. The coupling assembly allows the forehead support bracket to move to a patient-contacting position without adjustment by the user responsive to the mask being donned by such a patient. Figure 2 from the present application is reproduced below for

the Examiner's convenience in reviewing the claim language. Of course, the figures are merely illustrative of the invention, and are not meant to be construed as limiting.



Applicant submits that the '869 patent does not teach or suggest a mask that allows the forehead bracket to move to a correct position on a patient without adjustment by the user. Quite the contrary, the '869 patent uses a head mount adjustment mechanism 300 to selectively position the head mount 320 relative to mask 40 in discrete positions without allowing the head mount to move in a self-aligning fashion. Figure F19 from the '869 patent is reproduced below for the Examiner convenience in understanding these features of the mask taught by this patent.



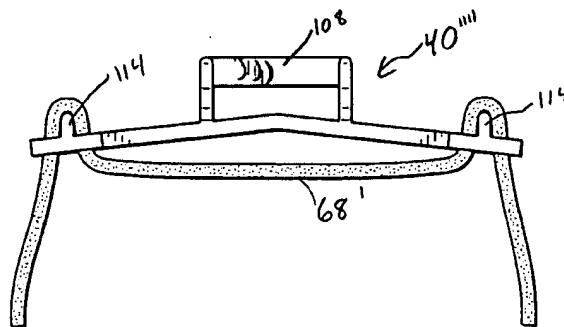
The '869 patent teaches using a locking bracket 306 to set the angle of the mask relative to the head mount. Once set, the locking bracket does not allow this angle to be altered unless done so by the user, for example by depressing spring tabs 252. See column 22, lines 33-37, of the '869 patent. As explicitly recited in column 23, lines 29-32, the head mount adjustment mechanism 300 includes detent projections 324 and detent slots 322 to “[maintain the head mount 320 in the adjusted position until readjusted]” (emphasis added). Moreover, nothing in the '869 patent teaches or suggests modifying this manner in which head mount 320 is coupled to the rest of the mask assembly so that it is freely moveable relative to the mask, for example, so that it self-aligns on the user without manual adjustment by the user. Thus, independent claim 1 is not anticipated or rendered obvious based on the '869 patent.

Independent claim 6 recites a gas delivery mask that includes a mask shell and a forehead support having a support arm associated with the mask shell and a forehead support bracket coupled to the support arm. An adjustment assembly is used to change the position of the forehead support relative to the mask. The adjustment assembly includes an arcuate attaching member (54) coupled to the mask shell. A first portion of the support arm is slideable along the arcuate attaching member to adjust a position of the forehead support relative to the mask shell. This curvilinear movement of the forehead support made possible by the arcuate attaching member is illustrated by arrow D in Figure 2 above. Applicant submits that the '869 patent does not teach or suggest providing an arcuate attaching member coupled to the mask shell to allow this type of movement of the forehead support relative the mask shell. At best, the '869 patent teaches pivoting movement or lateral (up and down) movement, but does not teach or suggest providing the features recited in claim 6 that allow for the two dimensional movement made possible by the arcuate member attached to the mask shell. Thus, independent claim 6 is not anticipated or rendered obvious based on the '869 patent.

Amended independent claim 9 recites a gas delivery mask that includes a mask shell and a forehead support, which in turn include, a support arm associated with the mask shell and a forehead support bracket. A coupling system attaches the support arm to the forehead support bracket such that the forehead support bracket is detachable from the support arm while

the mask is being worn by a patient. Claim 9 further recites that a patient circuit is coupled to the mask shell and not to the forehead support, and that a headgear is coupled to the forehead support bracket. Detaching the forehead support bracket allows the mask shell and patient circuit to be decoupled from the patient, while the headgear and the forehead support bracket remain coupled to the patient. Applicant submits that the '869 patent does not teach or suggest a mask having these features. For example, the '869 patent teaches attaching the patient circuit directly to the headgear mount via a socket 208 that is attached to the headgear mount. Thus, the mask and patient circuit cannot be detached as a unitary assembly from the forehead support bracket and headgear. Accordingly, independent claim 9 is not anticipated or rendered obvious based on the '869 patent.

Independent claim 14, as amended, recites a forehead support for use with a gas delivery mask. The forehead support includes a flexible headgear strap (68'), a forehead support bracket (40'''), a first slot (114) disposed on first end portion of the forehead support bracket, and a second slot (114 on the other side of the bracket) disposed on first end portion of the forehead support bracket.



The headgear strap is threaded in the first and second slots to connect the headgear strap to the forehead support bracket such that the headgear strap spans a length of a patient's forehead to define at least a portion of a cushion between the forehead support bracket and such a patient's forehead. Applicant submits that the '869 patent does not teach or suggest a forehead support having these features. The '869 patent teaches providing a rigid or semi-rigid head strap 224 that spans the user's forehead. However this strap is not threaded through any slots on the forehead

support because it is not a flexible, cushion-like strap. Thus, independent claim 14 is not anticipated or rendered obvious based on the '869 patent.

For the reasons presented above, applicant respectfully submits that independent claims 1, 6, 9, and 14 are not anticipated or rendered obvious by the cited references. In addition, claims 2-4, 7, 10, 11, 12, 16, and 17 are also not anticipated or rendered obvious due to their dependency from independent claims 1, 6, 9, or 14. Claims 7 and 15 have been cancelled rendering their rejection moot. Accordingly, applicant respectfully requests that the above rejection of claims 1-4, 6-12, and 14-17 be withdrawn.

Claims 5, 13, 16, and 17 stand rejected under 35 U.S.C. § 103 as being unpatentable over the '869 patent in view of PCT Appln. Pub. No. WO 00/78384 to Kwok et al. ("the '384 application"). Applicant respectfully traverses this rejection for the reasons presented below.

Claims 5 and 13 depend from independent claims 1 and 9, respectively. Claims 1 and 9 are not taught or suggested based on the '869 patent for the reasons presented above. The additional citation to the '384 application fails to provide the features of claim 1 and 9 that are omitted from the '869 patent. Thus the combination of the '869 patent and the '384 application does not anticipate or render obvious independent claims 1 and 9. Likewise, claims 5 and 13 are also not anticipated or rendered obvious due to their dependency from independent claims 1 or 9.

Independent claim 16 recites a method of donning a gas delivery mask having a mask shell and support arm coupled to the shell. This method includes donning a upper headgear strap on a head of a patient and orienting a gas delivery mask such that a mask shell is spaced apart from a face of a patient and a forehead support coupled to the mask shell is proximate to the forehead support bracket. The forehead support is then coupled to the forehead support bracket and the mask is rotated into place on the face of a patient. Independent claim 17 is similar to claim 16, except that claim 17 is directed to a method of disconnecting the support arm of the gas delivery mask from the forehead support bracket so that the mask can be removed from the patient. Applicant submits that the cited references do not teach or suggest this technique for donning a mask.

The Examiner contends that because the '384 application teaches a pivoting connection between a frame 12 and a joining member 14, it would be obvious to modify the mask taught by the '869 patent to include a pivoting technique for coupling a forehead bracket to the rest of the mask. Applicant respectfully disagrees.

The Examiner has failed to provide any suggestion as to why one skilled in the art would have been motivated to make this proposed modification, even if possible, which the applicant does not admit is the case. The law requires that the requisite motivation for modifying a reference be seen from some teaching, suggestion, or inference in the prior art and not from applicant's disclosure. *Uniroyal, Inc. v Rudcan-Wiley, Corp.*, 5 U.S.P.Q.2d 1434 (Fed. Cir. 1988). Indeed, the Examiner bears the burden of establishing the existence of either 1) some objective teaching in the prior art or 2) knowledge generally available to one of ordinary skill in the art which would lead that individual to change the primary reference. *In re Jones*, 21 U.S.P.Q.2d 1941, 1943-44 (Fed. Cir. 1992). Section 103 does not allow the Examiner to engage in picking and choosing from the prior art only to the extent that it will support a holding of obviousness, while excluding parts of the prior art essential to the full appreciation of what the prior art suggests to one of ordinary skill in the art. *In re Wesslau*, 147 U.S.P.Q. 391 (C.C.P.A. 1975). As the CAFC has said, obviousness cannot be established by combining the teachings of the prior art to produce the claimed invention, absent some teaching, suggestion or incentive supporting the combination. *ACS Hospital Systems v. Montefiore Hospital*, 221 U.S.P.Q. 929, 933 (Fed. Cir. 1984). There must be a suggestion in the art relied upon to use what one reference discloses in or in combination with the disclosure of the other reference or references relied upon by the Examiner. *In re Grabiak*, 226 U.S.P.Q. 870, 872 (Fed. Cir. 1986). The mere teaching of one feature, by itself, such a rotation of a forehead piece, does not lead one skilled in the art to use this feature in other masks. Thus, the proposed combination of references set forth by the Examiner is believed to be improper.

For the reasons presented above, applicant respectfully submits that independent claims 5, 13, 16, and 17 are not rendered obvious by the cited references. Accordingly, applicant respectfully requests that the above rejection of claims 5, 13, 16, and 17 be withdrawn.

This response is being filed within the three-month statutory response period which expires on June 11, 2005. In addition, no additional claim fees are believed to be required as a result of the above amendments to the claims. Nevertheless, the Commission is authorized to charge the any fee required under 37 C.F.R. §§ 1.16 or 1.17 to deposit account no. 50-0558.

All objections and rejections have been addressed. It is respectfully submitted that the present application is in condition for allowance and a Notice to the effect is earnestly solicited.

Respectfully submitted,

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